

AMENDED IN SENATE JUNE 20, 1996
AMENDED IN ASSEMBLY MAY 8, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 3115

Introduced by Assembly Member Gallegos

February 23, 1996

An act to amend Sections 22340 and 22600 of, *and to add and repeal Sections 22340.1 and 22600.1 of*, the Financial Code, relating to loans.

LEGISLATIVE COUNSEL'S DIGEST

AB 3115, as amended, Gallegos. Loans.

Under ~~existing law~~ the California Finance Lenders Law, with respect to consumer or commercial loans, a licensed finance lender or broker ~~licensed under the California Finance Lenders Law~~ may sell certain promissory notes to institutional investors, as defined, evidencing the obligation to repay ~~certain types of~~ the loans. A licensee may sell promissory notes for loans made by the licensee or for loans purchased from and made by another licensee under this law.

This bill would provide, until January 1, 2000, that a licensed finance lender or broker may sell promissory notes purchased from and made by an institutional lender, as specified, and may make agreements for the collection of payments and performance of services with respect to those notes.

~~This~~ The bill would *also* include a residential mortgage lender in the definition of an institutional investor, *with respect to consumer loans*.

Under the California Finance Lenders Law, for purposes of consumer loans, an institutional investor is defined to include a trust or other business entity established by an institutional investor for specified purposes, if certain requirements are met.

This bill would, for purposes of commercial loans regulated under the California Finance Lenders Law, define an institutional investor in the same manner.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22340 of the Financial Code is
2 amended to read:

3 22340. (a) A licensee may sell promissory notes
4 evidencing the obligation to repay loans made by the
5 licensee pursuant to this division or evidencing the
6 obligation to repay loans purchased from and made by
7 another licensee pursuant to this division to institutional
8 investors, and may make agreements with institutional
9 investors for the collection of payments or the
10 performance of services with respect to those notes.

11 (b) For the purpose of this section, “institutional
12 investor” means the following:

13 (1) The United States or any state, district, territory, or
14 commonwealth thereof, or any city, county, city and
15 county, public district, public authority, public
16 corporation, public entity, or political subdivision of a
17 state, district, territory, or commonwealth of the United
18 States, or any agency or other instrumentality of any one
19 or more of the foregoing.

20 (2) A bank, trust company, savings bank or savings and
21 loan association, credit union, industrial bank or industrial
22 loan company, finance lender, residential mortgage
23 lender, or insurance company doing business under the
24 authority of and in accordance with a license, certificate,



1 or charter issued by the United States or any state, district,
2 territory, or commonwealth of the United States.

3 (3) Trustees of pension, profit sharing, or welfare
4 funds, if the pension, profit sharing, or welfare fund has
5 a net worth of not less than fifteen million dollars
6 (\$15,000,000), except pension, profit sharing, or welfare
7 funds of a licensee or its affiliate, self-employed individual
8 retirement plans, or individual retirement accounts.

9 (4) A corporation with outstanding securities
10 registered under Section 12 of the Securities Exchange
11 Act of 1934 or any wholly owned subsidiary of that
12 corporation; provided, however, that the purchaser
13 represents that it is purchasing for its own account for
14 investment and not with a view to or for sale in
15 connection with any distribution of the promissory note.

16 (5) A syndication or other combination of any of the
17 foregoing that is organized to purchase the promissory
18 note.

19 (6) A trust or other business entity established by an
20 institutional investor for the purpose of issuing or
21 facilitating the issuance of undivided interests in, the
22 right to receive payments from, or that are payable
23 primarily from, a pool of financial assets held by the trust
24 or business entity if all of the following apply:

25 (A) The business entity is not a sole proprietorship.

26 (B) The pool of assets consists of one or more of the
27 following:

28 (i) Interest bearing obligations.

29 (ii) Other contractual obligations representing the
30 right to receive payments from the assets.

31 (iii) Surety bonds, insurance policies, letters of credit,
32 or other instruments providing credit enhancements for
33 these assets.

34 (C) The interests will be either of the following:

35 (i) Rated investment grade by Standard & Poor's
36 Corporation or Moody's Investors Service, Inc.
37 "Investment grade" means that the securities will be
38 rated by Standard & Poor's Corporation as AAA, AA, A,
39 or BBB, or by Moody's Investor Service, Inc., as Aaa, Aa,
40 A, or Baa, including a rating with a "+" or "—"

1 designation or other variations that occur within these
2 ratings.

3 (ii) Sold to an institutional investor as otherwise
4 defined in this section.

5 (D) The offer and sale of the securities is qualified
6 under the Corporate Securities Law of 1968 (Division 1
7 (commencing with Section 25000) of Title 4 of the
8 Corporations Code) or is registered under federal
9 securities laws, or is exempt from qualification or
10 registration.

11 (c) In the absence of agreement to the contrary by the
12 licensee and the institutional investor, all payments
13 received from the collection of payments shall be
14 deposited and maintained in a trust account, and shall be
15 disbursed from the trust account only in accordance with
16 the instructions of the owner of the promissory note.

17 SEC. 2. *Section 22340.1 is added to the Financial*
18 *Code, to read:*

19 22340.1. (a) *A licensee may sell to (1) an institutional*
20 *lender, or (2) an institutional investor described in*
21 *paragraph (6) of subdivision (b) of Section 22340,*
22 *promissory notes evidencing the obligation to repay loans*
23 *purchased from and made by an institutional lender, and*
24 *may make agreements for the collection of payments and*
25 *performance of services with respect to those notes. For*
26 *purposes of this section, "institutional lender" means any*
27 *bank, trust company, savings bank or savings and loan*
28 *association, credit union, industrial loan company or*
29 *residential mortgage lender doing business under the*
30 *authority of and in accordance with a license, certificate*
31 *or charter issued by the United States or this state.*

32 (b) *In the absence of agreement to the contrary by the*
33 *licensee and the institutional investor, all payments*
34 *received from the collection of payments shall be*
35 *deposited and maintained in a trust account, and shall be*
36 *disbursed from the trust account only in accordance with*
37 *the instructions of the owner of the promissory note.*

38 (c) *This section shall be repealed on January 1, 2000,*
39 *unless a later enacted statute, which becomes effective on*
40 *or before January 1, 2000, deletes or extends that date.*

1 SEC. 3. Section 22600 of the Financial Code is
2 amended to read:

3 22600. (a) A licensee may sell promissory notes
4 evidencing the obligation to repay loans made by the
5 licensee pursuant to this division or evidencing the
6 obligation to repay loans purchased from and made by
7 another licensee pursuant to this division to institutional
8 investors, and may make agreements with institutional
9 investors for the collection of payments or the
10 performance of services with respect to those notes.

11 (b) For the purposes of this section, “institutional
12 investor” means the following:

13 (1) The United States or any state, district, territory, or
14 commonwealth thereof, or any city, county, city and
15 county, public district, public authority, public
16 corporation, public entity, or political subdivision of a
17 state, district, territory, or commonwealth of the United
18 States, or any agency or other instrumentality of any one
19 or more of the foregoing.

20 (2) Any bank, trust company, savings bank or savings
21 and loan association, credit union, industrial bank or
22 industrial loan company, finance lender, or insurance
23 company doing business under the authority of and in
24 accordance with a license, certificate, or charter issued by
25 the United States or any state, district, territory, or
26 commonwealth of the United States.

27 (3) Trustees of pension, profit sharing, or welfare
28 funds, if the pension, profit sharing, or welfare fund has
29 a net worth of not less than fifteen million dollars
30 (\$15,000,000), except pension, profit sharing, or welfare
31 funds of a licensee or its affiliate, self-employed individual
32 ~~—retirements~~ *retirement* plans, or individual retirement
33 accounts.

34 (4) Any corporation with outstanding securities
35 registered under Section 12 of the Securities Exchange
36 Act of 1934 or any wholly owned subsidiary of that
37 corporation; provided, however, that the purchaser
38 represents that it is purchasing for its own account for
39 investment and not with a view to or for sale in
40 connection with any distribution of the promissory note.

1 (5) Any syndication or other combination of any of the
2 foregoing that is organized to purchase the promissory
3 note.

4 (6) A trust or other business entity established by an
5 institutional investor for the purpose of issuing or
6 facilitating the issuance of undivided interests in, the
7 right to receive payments from, or that are payable
8 primarily from, a pool of financial assets held by the trust
9 or business entity if all of the following apply:

10 (A) The business entity is not a sole proprietorship.

11 (B) The pool of assets consists of one or more of the
12 following:

13 (i) Interest bearing obligations.

14 (ii) Other contractual obligations representing the
15 right to receive payments from the assets.

16 (iii) Surety bonds, insurance policies, letters of credit,
17 or other instruments providing credit enhancements for
18 these assets.

19 (C) The interests will be either of the following:

20 (i) Rated investment grade by Standard & Poor's
21 Corporation or Moody's Investors Service, Inc.
22 "Investment grade" means that the securities will be
23 rated by Standard & Poor's Corporation as AAA, AA, A,
24 or BBB, or by Moody's Investor Service, Inc., as Aaa, Aa,
25 A, or Baa, including a rating with a "+" or "-"
26 designation or other variations that occur within these
27 ratings.

28 (ii) Sold to an institutional investor as otherwise
29 defined in this section.

30 (D) The offer and sale of the securities is qualified
31 under the Corporate Securities Law of 1968 (Division 1
32 (commencing with Section 25000) of Title 4 of the
33 Corporations Code) or is registered under federal
34 securities laws, or is exempt from qualification or
35 registration.

36 (c) In the absence of agreement to the contrary by the
37 licensee and the institutional investor, all payments
38 received from the collection of payments shall be
39 deposited and maintained in a trust account, and shall be

1 disbursed from the trust account only in accordance with
2 the instructions of the owner of the promissory note.

3 *SEC. 4. Section 22600.1 is added to the Financial*
4 *Code, to read:*

5 *22600.1. (a) A licensee may sell to (1) an institutional*
6 *lender, or (2) an institutional investor described in*
7 *paragraph (6) of subdivision (b) of Section 22600,*
8 *promissory notes evidencing the obligation to repay loans*
9 *purchased from and made by an institutional lender, and*
10 *may make agreements for the collection of payments and*
11 *performance of services with respect to those notes. For*
12 *purposes of this section, "institutional lender" means any*
13 *bank, trust company, savings bank or savings and loan*
14 *association, credit union, or industrial loan company*
15 *doing business under the authority of and in accordance*
16 *with a license, certificate or charter issued by the United*
17 *States or this state.*

18 *(b) In the absence of agreement to the contrary by the*
19 *licensee and the institutional investor, all payments*
20 *received from the collection of payments shall be*
21 *deposited and maintained in a trust account, and shall be*
22 *disbursed from the trust account only in accordance with*
23 *the instructions of the owner of the promissory note.*

24 *(c) This section shall be repealed on January 1, 2000,*
25 *unless a later enacted statute, which becomes effective on*
26 *or before January 1, 2000, deletes or extends that date.*

27 *SEC. 5. The amendment made to Section 22600 by*
28 *Section 3 of this act is intended to clarify the authority of*
29 *a licensed finance lender, under existing law, to sell either*
30 *commercial or consumer loans to a trust or other business*
31 *entity established for the purpose of issuing*
32 *mortgage-backed securities.*